

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

AUSTIN EDWARD LIGHTFEATHER,

Plaintiff,

vs.

BRANDON HOLISTER, LMHIP;
UNKNOWN WHITE FEMALE OFFICER
FOR NDCS, FOSTER, Inmate of
Tecumsehs Super Max Prison; B.J., Inmate
of Tecumsehs Super Max Prison;
NEBRASKA DEPARTMENT OF
CORRECTIONAL SERVICES, STEPHANIE
BAREN, Counsel Ombudsman, Inspector
General of Nebraska; BLUE, Case
Manager; VICTOR OSUNA, RICARDO
MANDOZA, LEWIS VASQUEZ, KRUGLE,
Captain, of RTC; CORPRAL ANDREWS,
MATTHEW PAVEY, CODY MILLER,
Corpral; and MARTIN, Dietary Kitchen;

Defendants.

8:23CV214

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff Austin Edward Lightfeather's Motion for Leave to Proceed in Forma Pauperis ("IFP"). [Filing No. 5](#). As stated in the Prison Litigation Reform Act ("PLRA"), a prisoner cannot

bring a civil action . . . or proceeding [IFP] if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action . . . in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

[28 U.S.C. §1915\(g\)](#).

The Court has previously determined that three or more federal court cases brought by Plaintiff, while a prisoner, were dismissed as frivolous or for failure to state a

claim upon which relief may be granted. See, e.g., *Lightfeather v. McSwine*, No. 8:22-cv-00238-JFB-PRSE (D. Neb.) ([Filing No. 11](#), finding Plaintiff has “three strikes” and dismissing complaint pursuant to [28 U.S.C. §1915\(g\)](#)). Previous cases brought by Plaintiff that were dismissed include: *Lightfeather v. Prey et al*, No. 8:21-cv-00211-RGK-PRSE (D. Neb.) (Filing Nos. [15](#) & [16](#), finding Plaintiff’s complaint failed to state a claim for relief and dismissing case on April 8, 2022, after Plaintiff failed to amend complaint); *Lightfeather v. Green et al*, No. 8:21-cv-00208-RGK-PRSE (D. Neb.) (Filing Nos. [12](#) & [14](#), finding Plaintiff’s complaint failed to state a claim for relief and dismissing case on October 12, 2021, after Plaintiff failed to amend complaint); *Lightfeather v. Ricketts et al*, No. 8:21-cv-00165-RGK-PRSE (D. Neb.) (Filing Nos. [12](#) & [14](#), finding Plaintiff’s complaint failed to state a claim for relief and dismissing case on October 7, 2021, after Plaintiff failed to amend complaint); *Lightfeather v. City of Lincoln*, No. 4:20-cv-03118-RGK-PRSE (D. Neb.) (Filing Nos. [112](#) & [113](#), May 24, 2021 Memorandum and Order and Judgment dismissing Plaintiff’s second amended complaint for failure to state a claim and for being frivolous); *Lightfeather v. Beatrice Sun Times, et al*, No. 8:21-cv-00114-RGK-PRSE (D. Neb.) (Filing Nos. [14](#) & [15](#), May 19, 2021 Memorandum and Order and Judgment dismissing Plaintiff’s complaint as frivolous).

Plaintiff acknowledges that he is subject to the “three strikes” rule and states that he is seeking to proceed under the immediate danger exception in [28 U.S.C. §1915\(g\)](#). [Filing No. 5 at 1, 5](#). In light of the foregoing, the Court will give Plaintiff 30 days in which to show cause why this case should not be dismissed pursuant to the provisions of [28 U.S.C. §1915\(g\)](#) or, in other words, to show cause why the immediate danger exception is applicable to him. Alternatively, Plaintiff may pay the Court’s \$402.00 filing and

administrative fees within 30 days. In the absence of good cause shown, or the payment of the necessary fees, this matter will be dismissed without further notice.

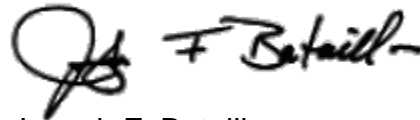
IT IS THEREFORE ORDERED:

1. Plaintiff has 30 days from the date of this Memorandum and Order to either show cause why this case should not be dismissed pursuant to [28 U.S.C. §1915\(g\)](#) or pay the Court's \$402.00 filing and administrative fees. In the absence of either action by Plaintiff, this matter will be dismissed without further notice.

2. The Clerk of Court is directed to set a pro se case management deadline in this matter with the following text: **July 10, 2023**: deadline for Plaintiff to show cause or pay fees.

Dated this 9th day of June, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J F Bataillon", with a stylized flourish at the end.

Joseph F. Bataillon
Senior United States District Judge